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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,444	04/01/2005	Christian Bumm	23265	5463
535	7590	09/03/2008		
K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900			EXAMINER LEONG, NATHAN T	
			ART UNIT 1792	PAPER NUMBER
			MAIL DATE 09/03/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,444	Applicant(s) BUMM ET AL.	
	Examiner NATHAN LEONG	Art Unit 4172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election Acknowledged

1. Applicant's election of the species in claims 5 and 24 are acknowledged.

However, upon further examination, examiner has found the need to make an additional restriction, which is presented below.

Election/Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-20, drawn to a sprayable coating agent in the form of granules.

Group II, claim(s) 21-35, drawn to a method for the production of granules.

PCT - Lack of Unity

Posteriori

Lack of unity of invention may be may only become apparent "a posteriori," that is, after taking the prior art into consideration, in the case of independent claims to A + X and A + Y, unity of invention(i.e. species) is present a posteriori as A is common to both claims.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical

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feature which is referred to Annex B of Appendix A1 of the MPEP (Administrative Instructions under the PCT, "Unity of Invention"). The express "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art" (Rule 13.2). Unity exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding claimed special technical features. In this case, the technical feature shared by each invention is the sprayable coating agent in the form of granules containing cellulose and/or other additives.

The question of unity of invention has been reconsidered retroactively by the examiner in view of the search performed; a review of DE 29604493 (Color & Paint), which teaches sprayable coating agents in a mixture containing cellulose fibers with curing agents, binders, colorants, and water, makes clear that the inventions of the groups I and II lack the same or corresponding special technical feature because the cited reference(s) appear to demonstrate that the claimed technical feature does not define a contribution which each of the inventions, considered as a whole, makes over the prior art. Accordingly, the prior art of the record supports restriction of the claimed subject matter in to the groups as mentioned immediately above.

3. This application contains claims directed to the following patentably distinct species:

- a. (claims 7 and 8) cellulosic material: Cotton, linters, pulp, paper, flax, hemp, jute, cuprammonium silk, rayon, lyocel, colored fibers, wood, wood shavings, sawdust, straw, cork or a specific mixture thereof.

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- b. (claims 9, 10, 14, 16, and 19) single fiber/pulverant material/polymer material/auxiliary: polyester, polyamide, polyacrylonitrile, poly-urethane, polyethylene, polypropylene, acetate fibers, silicate, water glass, glass, metal, carbon fibers, marble, quartz sand, silicic acid, chalk, gypsum, carbonates, metal oxides, polyethylene, polypropylene, polytetrafluoroethylene, polystyrene foam, acrylates, rubber, other modified and unmodified polysaccharides, organic or inorganic substances, colorants, binders, curing agents, dispersants, preservatives, fungicides, mica, flame-resistant materials, nanoparticles of any type, water, or a specific mixture thereof.
4. One species in each category (a) and (b) must be selected. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record. Currently, claim 1 is the generic claims for the species. Lack of unity is shown above for the generic claim.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN LEONG whose telephone number is (571)270-5352. The examiner can normally be reached on Monday to Friday, 7:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571)272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NATHAN LEONG/
Examiner, Art Unit 4172

/Michael Cleveland/
Supervisory Patent Examiner, Art Unit 1792

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